

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES—GENERAL

Case No. **CV 19-852 DMG (Ex)** Date June 7, 2019

Title ***Macarius Rizk v. Quality Is Our Recipe, LLC*** Page 1 of 1

Present: The Honorable **DOLLY M. GEE, UNITED STATES DISTRICT JUDGE**

KANE TIEN  
Deputy Clerk

NOT REPORTED  
Court Reporter

Attorneys Present for Plaintiff(s)  
None Present

Attorneys Present for Defendant(s)  
None Present

**Proceedings: IN CHAMBERS - ORDER RE DEFENDANT’S MOTION TO DISMISS  
[15] AND PLAINTIFF’S SECOND AMENDED COMPLAINT [17]**

On May 31, 2019, Defendant Quality Is Our Recipe, LLC moved to dismiss the First Amended Class Action Complaint. [Doc. # 15.] On June 7, 2019, Plaintiff Macarius Rizk filed a Second Amended Class Action Complaint (“SAC”). [Doc. # 17.] The SAC was filed as a matter of right under Federal Rule of Civil Procedure 15(a)(1)(B) because Plaintiff filed it within 21 days of service of Defendant’s motion to dismiss, and Plaintiff filed the prior amendment pursuant to the parties’ stipulation. *See* Stip. for Leave to Amend at 1–3 [Doc. # 12]; Order re Stip. at 1 [Doc. # 13]; Fed. R. Civ. P. 15(a)(1)(B); *Ramirez v. Cty. of San Bernardino*, 806 F.3d 1002, 1007 (9th Cir. 2015) (“[Rule 15(a)] does not mandate that the matter of course amendment under 15(a)(1) be exhausted before an amendment may be made under 15(a)(2), nor does it state that the ability to amend under 15(a)(1) is exhausted or waived once a 15(a)(2) amendment is made.”). Therefore, the Court **DENIES without prejudice** Defendant’s motion to dismiss as **MOOT** and **VACATES** the June 28, 2019 hearing thereon. *See In re WellPoint, Inc. Out-of-Network UCR Rates Litig.*, 903 F. Supp. 2d 880, 893–94 (C.D. Cal. 2012) (“[A]n ‘amended complaint supersedes the original, the latter being treated thereafter as nonexistent.’ \* \* \* ‘[A]n amended pleading is a new round of pleadings . . . [and] is subject to the same challenges as the original (*i.e.*, motion to dismiss, to strike, for more definite statement).’”). Defendant shall file its response to the SAC **within 21 days** of the date of this Order.

**IT IS SO ORDERED.**